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By email to CELA@sec.gov

March 27, 2017

Jeff S. Jordan

Assistant General Counsel

Complaints Examination & Legal Administration

Federal Election Commission

999 E Street, NW

Washington, DC 20463

Re: MUR 7213

Labor United for Connecticut

Dear Mr. Jordan:

I am writing on behalf of respondent Labor United for Connecticut ("LUC") in response to your letter dated February 15, 2017 enclosing a January 23, 2017 complaint ("the Complaint") from J.R. Romano, Jr. ("Romano"), the Chairman of the Connecticut Republican Party. As we explain below, the Federal Election Commission ("Commission" or "FEC") should find no reason to believe that LUC violated the Federal Election Campaign Act ("the Act"). Alternatively, because LUC is now defunct the Commission should exercise its prosecutorial discretion and dismiss this matter.¹

LUC was formed as an Internal Revenue Code § 527 political organization to raise and spend funds on independent expenditures concerning Connecticut state legislative races. As Connecticut law requires, *see* CONN. GEN. STAT. § 9-600 *et seq.*, LUC registered as an Independent Expenditure Only Political Committee with the Connecticut State Elections Enforcement Commission ("SEEC") on September 22, 2016. And, it registered with the Internal Revenue Service ("IRS") on its Form 8871 on September 27, 2016. LUC ceased political activities on October 26, 2016, and subsequently refunded its remaining unobligated funds to its contributors. It formally terminated with SEEC on December 7, 2016, and with the IRS on

¹ Although LUC is a defunct entity, as we note below its sole former official sought out undersigned counsel in order both to respond to the Complaint, file a Year-End report following a failure-to-file notification from the Reports Analysis Division ("RAD"), and prevent potential further adverse proceedings.

January 31, 2017. LUC timely reported all of its spending to both SEEC and the IRS.²

The Complaint alleges that LUC is a state political action committee that raised money to benefit state candidates, but also used those funds to pay for digital advertising disparaging Republican presidential nominee Donald Trump ("Trump"). A printout of a digital advertisement attached to the Complaint references Trump and a state candidate, William Petit. The Complaint alleges that LUC spent more than \$1,000 in opposition to a federal candidate but failed to register as a federal political action committee in violation of the Act. However, LUC was not required to register as a federal political action committee because it did not have the major purpose of influencing federal elections, a prerequisite to "political committee" status that the Complaint fails to acknowledge.

"Political committees" must register with the Commission and periodically disclose their receipts and disbursements. 52 U.S.C. §§ 30102, 30103, 30104. The Act and Commission regulations define a "political committee" as "any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." See 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5. In *Buckley v. Valeo*, the Supreme Court held that defining political committee status "only in terms of [the] amount of annual 'contributions' and 'expenditures'" might be overbroad, and concluded that the term "political committee" "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. 1, 79 (1976) (emphasis added). This remains the test for political committee status to this day. See generally FEC, Political Committee Status, 72 Fed. Reg. 5595 (Feb. 7, 2007) (Supplemental Explanation and Justification) ("2007 E&J"). Accordingly, LUC, which is not alleged to be (and was not) under any federal candidate's control, must have registered as a political committee only if it both (1) crossed the \$1,000 threshold and (2) had as its "major purpose" the nomination or election of federal candidates.

The Commission applies the major purpose test through a case-by-case analysis of an organization's "overall conduct," including its public statements about its mission, organizational documents, government filings, the proportion of its spending related to "federal campaign activity," and the extent to which fundraising solicitations indicate that funds raised will be used to support or oppose specific candidates. 2007 E&J. Federal courts have upheld the Commission's case-by-case approach. See, e.g., *Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012); *Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007).

Here, LUC did *not* have as its "major purpose" the nomination or election of federal candidates: to the contrary, as is clear from LUC's internal fundraising and strategy materials, government filings, and the proportion of its spending on public advertisements, LUC's major purpose was the election of Connecticut state legislative candidates.

² The facts asserted in this response are supported by the attached Affidavit of Paul Filson ("Affid."). SEEC filings are available at https://seec.ct.gov/eCrisHome/eCRIS_Search/eCrisSearchHome, and IRS filings are available at <https://forms.irs.gov/app/pod/basicSearch/search?execution=e1s1>. The SEEC and IRS websites do not enable links to particular documents.

LUC was established by a Connecticut labor organization, the SEIU Connecticut State Council, and its sole official was Paul Filson, as reflected on LUC's registrations with SEEC and the IRS and on its Form 5 reports with the Commission. LUC was unincorporated and did not have organizational documents such as bylaws. The document that explains LUC's mission, known as LUC's "Pitch and Plan," was dated September 29, 2016 and distributed to potential donors, which explained that "LUC was created in September 2016 to provide a vehicle for unions to engage in independent expenditure electoral activity in Connecticut. It was formed and funded by unions and it is run by unions and *its goal for 2016 is to elect pro-worker/pro-union legislators to the Connecticut General Assembly*" (emphasis added). This document specified 25 targeted Connecticut Senate and House races in which LUC would support the Democratic and oppose the Republican candidates, and it mentioned neither Trump, other federal candidates nor the federal election itself. *Id.*

During October, at LUC's political consultant's recommendation, LUC decided also to incorporate in some of its advertising messages that tied the targeted Republican candidates to Trump due to his broad unpopularity in Connecticut. LUC had no concern that Trump could win the state; rather, including him in some of the advertising was considered an effective message to persuade voters who disliked him to also oppose state legislative candidates in targeted races because they were running on his ticket.³ LUC ultimately produced and distributed three different digital ads concerning 13 Connecticut state legislative races. The ads were the same for each race except for the names of the state candidates, and each ad rotated equally in each race.

When determining the allocation of expenses between federal and nonfederal candidates, the Commission evaluates the "proportion of space or time" devoted to federal candidates compared to the total space or time devoted to all candidates. *See* 11 C.F.R. § 106.1(a). Applying this standard, LUC's ad content was allocated approximately 58% to nonfederal candidates and 42% to federal candidate Trump, as follows:

- The first ad, which the Complaint does not reference, neither mentions nor depicts Mr. Trump or other federal candidates. *See* Affid. Attachment ("Att.") A. Its text states that "We need good jobs with good pay in Connecticut. Not more breaks for \$millionaires or \$billionaires. Vote on 11/8 for [rotating state candidate]." The text is superimposed over a hand holding up an "I voted" sticker. It is 0% federal, 100% nonfederal.
- The second ad is the one attached to the Complaint. It states: "Stop Donald Trump and Republican [state candidate]'s Attack on women and families. Vote on 11/8." *See* Affid. Att. B. This text is superimposed over a picture of Trump. Per Commission regulations for allocated ads between multiple candidates, *id.*, this ad is 75% federal and 25% nonfederal because the image only depicts a federal candidate and the text mentions both a federal and a nonfederal candidate.

³ LUC's IRS filings also demonstrate that LUC did not have a major purpose of influencing federal elections. Its IRS Form 8871 filed on September 27, 2016 stated its purpose as "[p]artisan electoral activity in Connecticut." On December 29, after it completed its political activities, which also entailed the communications about Trump, LUC amended its Form 8871's purpose statement to indicate that its purpose "[p]artisan electoral activity in Connecticut primarily in state elections." (The delay in amending the form was due to the IRS's delay in providing LUC the electronic password that allowed it to submit further filings.)

- The third ad, which the Complaint also does not reference, states: “NO to the vicious Trump campaign against women and families. Vote NO on Trump and Republican [rotating state candidate] Nov. 8.” The text is accompanied by a generic image of a woman holding up her hand with the word “NO” written on the palm. *See* Affid. Att. C. This ad names both a nonfederal candidate and a federal candidate and is 50% federal, 50% nonfederal.

LUC was aware that the language about Trump in the ads necessitated filing Form 5 with the Commission, and it timely filed a “24 Hour” independent expenditure report on October 17. However, Mr. Filson completed and filed this report without legal analysis of which contributions to report and how to divide costs between the federal and state content of the ads. The report erroneously self-identified as a “48 Hour” report and listed *all* of LUC’s contributions received and expenditures made, rather than what was actually required: incoming contributions made for the purpose of financing independent expenditures and the outgoing independent expenditures themselves. *See* 11 C.F.R. §§ 109.10(b), 109.10(e), 100.16(a), 100.52(a). After LUC received both your February 15 letter regarding the Complaint, and RAD’s February 17 Request for Additional Information regarding LUC’s failure to file a Form 5 Year End Report, LUC sought legal counsel about these matters. As a result of doing so, on March 7 LUC filed its Year-End Report, and on March 8 it filed its amended 48 Hour report, both of which accurately reported only its federally reportable transactions. In particular, both reports listed only contributors that knew that LUC’s digital advertising would also refer to Trump, and they reported expenditures based on the proportion of LUC’s advertising that did so.

In sum, the fact that a majority of LUC’s digital advertising expenditures were for nonfederal elections, combined with LUC’s actual mission, internal strategy, fundraising documents and IRS filings, demonstrate that LUC did not have the major purpose of influencing federal elections.

Finally, even if the Commission were to conclude that LUC might have had that major federal purpose—which it did not—we respectfully request that the Commission exercise its prosecutorial discretion to dismiss the matter because LUC is defunct. *See Citizens for Responsibility and Ethics in Washington v. FEC (“CREW”)*, No. 15-2038, 2017 U.S. Dist. LEXIS 24253, *36-*40 (D.D.C. Feb. 22, 2017) (holding that the Commission acted rationally in declining to pursue enforcement against a defunct entity). Like the entity in *CREW*, LUC has no money, officers or directors. Given that the Commission has limited resources, “it may have little interest in punishing a group that it knows is unlikely to violate [the Act] again and possibly could not defray the costs of litigation through the payment of a fine.” *Id.*

For these reasons, LUC respectfully requests that the Commission find no reason to believe that LUC has violated the Act. Alternatively, LUC requests that the Commission exercise its prosecutorial discretion and dismiss the matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laurence E. Gold". The signature is fluid and cursive, with the first name "Laurence" written in a larger, more prominent script than the last name "Gold".

Laurence E. Gold

Counsel for Respondent
Labor United for Connecticut

cc: Paul Filson

BEFORE THE FEDERAL ELECTION COMMISSION

Labor United for Connecticut

MUR 7213

AFFIDAVIT OF PAUL FILSON

I, Paul Filson, do swear and affirm the following:

1. I served as Labor United for Connecticut's ("LUC") sole official during its entire existence.
2. LUC was formed by the SEIU Connecticut State Council as an Internal Revenue Code § 527 political organization to raise and spend funds on independent expenditures concerning Connecticut state legislative races.
3. I registered LUC as an Independent Expenditure Only Political Committee with the Connecticut State Elections Enforcement Commission ("SEEC") on September 22, 2016.
4. I registered LUC with the Internal Revenue Service ("IRS") as a political organization on September 27, 2016, listing its purpose as "[p]artisan electoral activity in Connecticut."
5. LUC ceased political activities on October 26, 2016, and subsequently refunded its remaining unobligated funds to its contributors.
6. LUC formally terminated with SEEC on December 7, 2016, and with the Internal Revenue Service on January 31, 2017.
7. LUC was unincorporated and did not have organizational documents such as bylaws.
8. I drafted the September 29, 2016, document that explained LUC's mission, known as LUC's "Pitch and Plan." This document was primarily created for prospective donors.
9. The Pitch and Plan accurately stated that "LUC was created in September 2016 to provide a vehicle for unions to engage in independent expenditure electoral activity in Connecticut. It was formed and funded by unions and it is run by unions and its goal for 2016 is to elect pro-worker/pro-union legislators to the Connecticut General Assembly."

10. The Pitch and Plan specified 25 targeted Connecticut Senate and House races in which LUC would support the Democratic and oppose the Republican candidates. The Pitch and plan contained other analysis regarding these state candidate elections. The Pitch and Plan neither mentioned any federal candidates nor the federal election itself, nor did it allude to the possibility of undertaking public communications or any activities whatsoever with respect to any federal race. At the time the Pitch and Plan was created, LUC had no intention to carry out public communications or any other activities with respect to federal elections.
11. During October 2016, at LUC's political consultant's recommendation, LUC decided to incorporate into some of its advertising messages that tied the targeted Republican state candidates to Republican Presidential nominee Donald Trump ("Trump") due to Trump's broad unpopularity in Connecticut. LUC had no concern that Trump could win in Connecticut; rather, including him in some of the advertising was considered an effective message to persuade voters who disliked him to oppose state legislative candidates in targeted races because they were running on his ticket.
12. LUC ultimately produced and distributed three different digital ads concerning 13 Connecticut state legislative races. The ads were the same for each race except for the names of the state candidates, and each ad rotated equally in each race. Attachments A, B, and C are examples of these identical ads.
13. I was aware that LUC's language about Trump in two of the three digital ads necessitated filing FEC Form 5, and I filed a "24 Hour" Form 5 report on October 17 on LUC's behalf that reported all of LUC's incoming contributions to date, and all of its spending for the digital advertising. I completed and filed this report without legal analysis of which contributions to report and how to divide costs between the federal and state content of the ads.
14. After receiving an electronic password from the IRS, I amended LUC's IRS registration on December 29, 2016 to state that its purpose was "[p]artisan electoral activity in Connecticut primarily in state elections."
15. After LUC received the Federal Election Commission's ("FEC") February 15 letter enclosing the Complaint in this matter, and the FEC reports Analysis Division's February 17 Request For Additional Information regarding LUC's failure to file a Form 5 Year End Report, LUC sought legal counsel about these matters. As a result of doing so, on March 7, 2017, LUC filed its Year-End Report, and on March 8, 2017 it filed its amended 48 Hour report (rather than a 24 Hour report), both of which accurately reported only its federally reportable transactions, and not all of its transactions as did the "24 Hour" report. In particular, the amended 48 Hour report and the Year End report

only listed contributors that knew that LUC's digital advertising would also refer to Trump, and LUC's reports disclosed expenditures based on the proportion of LUC's advertising that did so.

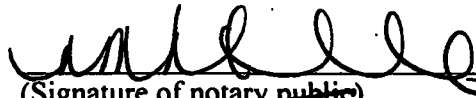
16. I am providing the portions of this affidavit concerning the contents of the Pitch and Plan document rather than submitting the document itself due to the FEC's recently adopted policy that it will publicly release all attachments to responses to complaints. The Pitch and Plan is a sensitive political document that, even though the election is over, reveals details about LUC contributors' political strategies and plans with respect to Connecticut state elections and other entities that participate in them. Except for the FEC's change of policy, LUC would have provided the document itself.

Further affiant sayeth not.


Paul Filson

I, Nicole Rothgeb, ^{Commissioner of Superior Court} a ~~Notary Public~~, hereby certify that on the 27th day of March, 2017, Paul Filson appeared before me and signed the foregoing document and has averred that the statements therein contained are true.

As witness my hand and notarial seal

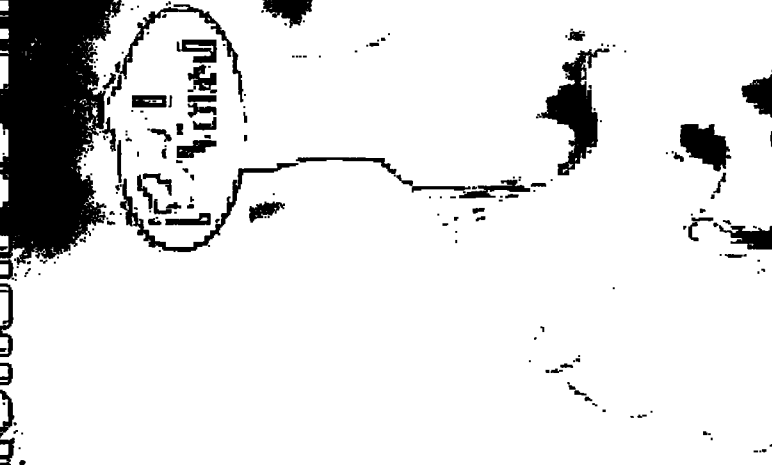

(Signature of notary public)
Commissioner of Superior
Court of Connecticut

My Commission expires: _____

(NOTARY SEAL)

Attachment A

**We need good jobs
with good pay in Connecticut.
Not more breaks for
\$millionaires and \$billionaires.**



Vote on 11/8 for Saud Anwar

Attachment B



**Stop Donald Trump and Republican Tom
Delnicki's Attack on women and families**

Vote on 11/8

Attachment C



**NO to the vicious Trump campaign against
women and families. Vote NO on Trump and**

Republican Delnicki Nov. 8